



0000151291

**BEFORE THE ARIZONA CORPORATIC**

RECEIVED

**COMMISSIONERS**

**BOB STUMP, Chairman**  
**GARY PIERCE**  
**BRENDA BURNS**  
**BOB BURNS**  
**SUSAN BITTER SMITH**

2014 FEB 21 P 2:06

AZ CORP COMMISSION  
DOCKET CONTROL

ORIGINAL

IN THE MATTER OF REORGANIZATION ) DOCKET NO. E-04230A-14-0011  
 OF UNS ENERGY CORPORATION ) DOCKET NO. E-01933A-14-0011

Arizona Corporation Commission

DOCKETED

FEB 21 2014

DOCKETED BY

) NOBLE AMERICAS ENERGY  
 ) SOLUTIONS LLC'S REPLY TO UNS  
 ) ENERGY CORPORATION'S AND  
 ) FORTIS, INC.'S RESPONSE TO NOBLE  
 ) AMERICAS ENERGY SOLUTIONS'  
 ) APPLICATION FOR LEAVE TO  
 ) INTERVENE

## I.

## INTRODUCTION

Noble Americas Energy Solutions LLC ("Noble Solutions") hereby submits its Reply to UNS Energy Corporation's ("UNS Energy") and Fortis, Inc.'s ("Fortis") February 18, 2014 Response to Noble Solutions' February 11, 2014 Application for Leave to Intervene in the above-captioned and above-docketed proceeding ("Instant proceeding").

## II.

## DISCUSSION

A. **Noble Solutions' Intervention Would Not Unduly Broaden the Scope of the Instant Proceeding**

At page 3, line 24 – page 4, line 2 of their joint Response, UNS Energy and Fortis state as follows:

"Should the Commission grant Noble's intervention, Noble's participation must be limited to the relevant issues under Rule 803. Inquiry into potential positions in generic dockets not related to the standards expressly set forth in Rule 803, is not relevant and will most certainly broaden the scope of this proceeding." [emphasis

1 added]

2 Ironically and interestingly enough, this statement supports the appropriateness of Noble  
3 Solution's request for leave to intervene in the Instant Proceeding.

4 More specifically, Rule 803(C)<sup>1</sup> of the Commission's Rules and Regulations provides that

5 "C. At the conclusion of any hearing on the organization or  
6 reorganization of a utility holding company, the Commission may  
7 reject the proposal if it determines that it would impair the financial  
8 status of the public utility, otherwise prevent it from attracting  
9 capital at fair and reasonable terms, or impair the ability of the  
10 public utility to provide safe, reasonable and adequate service."  
11 [emphasis added]

12 As discussed at page 2, lines 2-5 of Noble Solutions' aforesaid Application for Leave to Intervene  
13 in the Instant Proceeding,

14 "The Joint Notice observes that 'the past decade has brought  
15 enormous changes to the utility industry,' and states that

16 'In the near future, UNS Energy and the Arizona  
17 Utilities must address significant issues including: . .  
18 . (iv) innovations in the nature and delivery of  
19 electricity service.'"

20 Further, in his January 24, 2014 Prepared Testimony, UNS Energy's Chairman and Chief  
21 Executive Officer, Paul J. Bonavia, alludes to the fact(s) that

22 "In addition to rising capital cost, the Arizona Utilities face the  
23 prospect of future revenue losses due to . . . other emerging  
24 technologies . . . At the same time, we will be pressed to adapt to  
25 changes in our customers' energy consumption needs and  
26 expectations . . . and . . . to offer customers a broader array of  
27 choices in price and quality of service."<sup>2</sup>

28 Suffice it to say, these prospective challenges will bear directly upon the future ability of  
the Arizona Utilities "to provide safe, reasonable and adequate service" to their respective  
customers within the contemplation of Rule 803(C). Further, as Mr. Bonavia implicitly  
acknowledges in the above-quoted excerpts from his prepared testimony, what is "safe, reasonable

---

<sup>1</sup> See A.A.C. R14-2-803(C).

1 and adequate service” in the future will need to take into account changes in the Arizona Utilities’  
2 “customers’ energy consumption needs and expectations.”

3         Against this background, Noble Solutions respectfully submits that it is disingenuous for  
4 UNS Energy and Fortis to contend that the views and position(s), of Fortis and FortisUS with  
5 respect to the aforementioned challenges and issues, as more fully discussed in Noble Solutions’  
6 Application for Leave to Intervene, are irrelevant to the scope of the Instant Proceeding. To the  
7 contrary, such views and position(s) directly relate to one (1) of the decisional standards set forth  
8 in Rule 803(C), namely, would or could Commission approval of the proposed reorganization  
9 which is the subject of UNS Energy’s and Fortis’ January 10, 2014 Joint Notice of Intent to  
10 Reorganize impair the future ability of the Arizona Utilities “to provide safe, adequate and  
11 reasonable service” to their respective customers?

12         In that regard, and as discussed in detail at page 4, line 22 – page 6, line 21 of Noble  
13 Solutions’ Application for Leave to Intervene, the governance provisions of the December 11,  
14 2013 Agreement and Plan of Merger and the January 24, 2014 Prepared Testimony of UNS  
15 Energy and Fortis witnesses make clear that Fortis will have a dominant influence on the views  
16 and position(s) of UNS Energy and the Arizona Utilities in the future with respect to, *inter alia*,  
17 regulatory matters involving the Commission and its jurisdictional oversight responsibilities.  
18 Thus, it is important that the Commission and parties of record have an opportunity within the  
19 context of the Instant Proceeding to ascertain the views and position(s) of Fortis’ senior executive  
20 management with respect to currently identifiable regulatory matters and concerns, including those  
21 which are the subject of the Commission’s Innovation Docket.<sup>3</sup> That is particularly the case in this  
22 instance, since no evidentiary hearings have been scheduled or are currently contemplated in the  
23 Innovation Docket at which a Fortis witness or witnesses would be available to provide sworn  
24 testimony.

25         In summary, for the reasons discussed above and in its Application for Leave to Intervene,  
26 Noble Solutions respectfully submits that its intervention (i) would not “most certainly broaden the  
27

28 <sup>2</sup> January 24, 2014 Prepared Testimony of Paul J. Bonavia at page 4, lines 22 – page 5, line 3.

scope”<sup>4</sup> of the Instant Proceeding, and (ii) would be within and relevant to the contemplation and standards of Rule 803(C).

**B. Noble Solutions Would be Directly and Substantially Affected by a Commission Decision in the Instant Proceeding**

Not surprisingly, UNS Energy and Fortis appear to endeavor to suggest that the term “person,” as the same appears within the Commission’s Rules and Regulations governing intervention generally means (i) a customer, (ii) an organization representing the interests of customers or (iii) a person or an organization having an existing business relationship with the utility applicant in question. However, they also implicitly acknowledge that these are not the only characteristics that a person or entity could possess in order to qualify as a “person” within the meaning of A.A.C. R14-3-105.<sup>5</sup> Furthermore, the Commission in fact on previous occasions has granted intervention to persons who did not possess any of the aforementioned three (3) characteristics, but did possess the prospect of a future business relationship with the utility applicant in question. In that regard, the undersigned counsel has represented both wholesale electric generation and retail electric service provider entities in previous proceedings before the Commission involving both Tucson Electric Power Company (“TEP”) and Arizona Public Service Company. In those instances, the nexus occasioning intervention existed in the form of how a Commission decision on issues in the proceeding in question could impact the prospects for the intervenor in question doing business in the future, either with the utility applicant itself or within the certificated service area of the utility applicant.<sup>6</sup>

In this instance, the nexus warranting Noble Solutions’ intervention and participation in the Instant Proceeding arises from the fact that under Rule 803(C) the Commission must determine whether or not approval of the proposed reorganization (or merger) would or could impair the

---

<sup>3</sup> See Docket No. E-00000J-13-0375.

<sup>4</sup> See UNS Energy’s and Fortis’ Response at page 4, lines 1-2.

<sup>5</sup> See UNS Energy’s and Fortis’ Response at page 1, line 19 – page 2, line 3.

<sup>6</sup> One (1) such example was TEP’s next-to-last rate case, in which the undersigned counsel represented Southwestern Power Group II, LLC, Bowie Power Station, LLC and Mesquite Power, LLC (wholesale generation providers) and Semptra Energy Solutions LLC (retail services provider). Each of these entities constructively participated in that proceeding and were signatories to the Settlement Agreement which was ultimately approved by the Commission. In

1 future ability of the Arizona Utilities "to provide safe, reasonable and adequate service" to their  
2 respective customers. As discussed at page 3, line 23 – page 4, line 21 of Noble Solutions'  
3 Application for Leave to Intervene,

4 "Noble Solutions shares TEP's and UNS Electric's view that the  
5 Commission's current energy utility regulatory model is outdated,  
6 and that the Commission can and should make changes to the same  
7 which recognize and allow for recent and ongoing innovation and  
8 technological developments which can affect the manner of  
9 generation and delivery of energy and related services to the  
ultimate consumer. It is for that reason that Noble Solutions also  
requested (and on January 6, 2014 was granted) intervention in the  
Innovation Docket." [See Noble Solutions Application for Leave to  
Intervene at page 4, lines 16-21]

10 To the extent that the Commission should reach a similar conclusion in the Innovation  
11 Docket, then what is "safe, reasonable and adequate service" within the meaning of Rule 803(C)  
12 could significantly change, including allowing for the provision of services to customers of the  
13 Arizona Utilities such as those offered by Noble Solutions. In turn, how the Arizona Utilities  
14 respond to change(s) in the Commission's current energy regulatory model could directly and  
15 substantially affect the ability of Noble Solutions to have a future business relationship with the  
16 Arizona Utilities and/or their respective customers.

17 Against this above background, Noble Solutions would be directly and substantially  
18 affected by a Commission decision as to whether or not to approve the proposed reorganization (or  
19 merger). In that regard, given the dominant future influence Fortis will have on the Arizona  
20 Utilities in the future with respect to regulatory matters, in the event that the proposed merger is  
21 approved, Noble Solutions should have an opportunity to intervene in the Instant Proceeding to  
22 examine Fortis and UNS Energy witnesses, and to present testimony as appropriate.

### 23 III.

### 24 CONCLUSION

25 For the reasons discussed in Sections II(A) and II(B) above in this Reply to UNS Energy's  
26 and Fortis' aforementioned Response, Noble Solutions believes that (i) it has satisfied the  
27

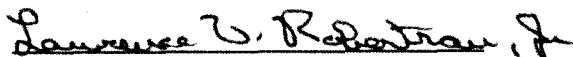
28 that regard, coincidentally, Noble Solutions is the business successor-in-interest to Sempra Energy Solutions LLC.

LAWRENCE V. ROBERTSON, JR.  
ATTORNEY AT LAW  
P O Box 1448  
Tubac, Arizona 85646

1 requirements for intervention set forth in A.A.C. R14-3-105, and, (ii) therefore its Application for  
2 Leave to Intervene in the Instant Proceeding should be granted.

3  
4 Dated this 20<sup>th</sup> day of February 2014.

5  
6 Respectfully submitted,

7 

8 Lawrence V. Robertson, Jr.

9 Attorney for Noble Americas Energy Solutions LLC

10 The original and thirteen (13) copies  
11 of the foregoing will be filed  
12 the 21<sup>st</sup> day of February 2014 with:

13 Docket Control Division  
14 Arizona Corporation Commission  
15 1200 West Washington Street  
16 Phoenix, Arizona 85007

17 A copy of the same served by e-mail  
18 or first class mail that same date to:

19 Lyn A. Farmer, Chief Administrative Law Judge  
20 Hearing Division  
21 Arizona Corporation Commission  
22 1200 West Washington Street  
23 Phoenix, Arizona 85007

24 Jane L. Rodda, Administrative Law Judge  
25 Hearing Division  
26 Arizona Corporation Commission  
27 400 West Congress, Suite 218  
28 Tucson, Arizona 85701

Bradley Carroll  
UNS Energy Corporation  
88 E. Broadway Blvd  
MS HQE910  
P.O. Box 711  
Tucson, AZ 85702

LAWRENCE V. ROBERTSON, JR.  
ATTORNEY AT LAW  
P O Box 1448  
Tubac, Arizona 85646

1 Michael W. Patten  
Roshka DeWulf & Patten, PLC  
2 One Arizona Center  
100 East Van Buren Street, Suite 800  
3 Phoenix, AZ 85004  
4 Attorneys for UNS Energy Corporation

5 Patricia Lee Refo  
Snell & Wilmer, LLP  
6 One Arizona Center  
400 East Van Buren Street, Suite 1900  
7 Phoenix, AZ 85004  
8 Attorneys for Fortis Inc.

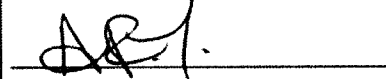
9 Daniel W. Pozefsky  
Chief Counsel  
10 Residential Utility Consumer Office  
11 1110 West Washington, Suite 220  
Phoenix, AZ 85007

12 C. Webb Crockett  
13 Patrick J. Black  
Fennemore Craig, PC  
14 2394 E. Camelback Road, Suite 600  
Phoenix, AZ 85016-3429  
15 Attorneys for Freeport-McMoRan and AECC

16 Janice Alward, Chief Counsel  
17 Legal Division  
18 Arizona Corporation Commission  
1200 West Washington Street  
19 Phoenix, Arizona 85007

20 Steven Olea, Director  
Utilities Division  
21 Arizona Corporation Commission  
22 1200 West Washington Street  
Phoenix, Arizona 85007

23 COASH & COASH, INC.  
24 COURT REPORTING  
1802 N. 7<sup>th</sup> Street,  
25 Phoenix, AZ 85006

26 

c:\users\angela\documents\larry-noble energy solutions\14-0011\nobles reply to uns-fortis response to app to intrvn cln3 fnl doc